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Supreme Court, U.S.
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No. 03-380

IN THE

# Supreme Court of the United States

MANUEL DAVILA,

*Petitioner,*

*v.*

DELTA AIR LINES, INC.,

*Respondent.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

## BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Did the Eleventh Circuit Court of Appeals properly affirm the District Court's dismissal of Petitioner's claims relating to the termination of his employment with Respondent as barred by the doctrine of *res judicata*, where Petitioner previously brought and lost a lawsuit relating to the same termination of employment?

## STATEMENT PURSUANT TO RULE 29.6

Respondent, Delta Air Lines, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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## STATEMENT OF THE CASE

Petitioner Manuel Davila, who proceeds *pro se*, again seeks to litigate the termination of his employment as a pilot for Respondent Delta Air Lines, Inc. ("Delta") on May 17, 1995. His current lawsuit claims that his termination was a breach of contract and in violation of the Americans with Disabilities Act, as amended, 42 U.S.C. §§ 12101, *et seq.* ("ADA"). The District Court properly dismissed the action as barred by a previous action that Petitioner had filed and lost relating to the same termination, and the Court of Appeals properly affirmed.

Petitioner's Statement of the Case is incomplete and misleading. The factual background of this matter is set forth in the opinion of the Eleventh Circuit Court of Appeals, *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185-86 (11th Cir. 2003). In short, Delta terminated Petitioner because he fraudulently claimed to be disabled from flying and drew disability benefits at the same time he held first-class medical certificates from the FAA that allowed him to fly. Petitioner filed a grievance challenging his termination, which proceeded to arbitration before a five-person System Board of Adjustment ("System Board") in accordance with the Railway Labor Act, 45 U.S.C. §§ 151, *et seq.* ("RLA"). This System Board upheld Petitioner's termination, finding "clear and compelling evidence that [Petitioner] intentionally defrauded" Delta when he accepted disability payments despite not being disabled from flying. *Davila*, 326 F.3d at 1186.

Petitioner then filed a lawsuit against Delta in which he sought review under the RLA of the System Board's award upholding his termination, *Davila v. Delta Air Lines, Inc.*,

Case No. 98-02345-CIV-Hoeveler (S.D. Fla. filed Oct. 9, 1998) ("*Davila I*"). Delta moved to dismiss the Complaint in *Davila I* because Petitioner failed to allege grounds to challenge the arbitration award under the extremely narrow standard of review permitted by the RLA. The District Court dismissed Petitioner's Complaint on the basis that he had failed to state a claim for federal court review of the System Board's award. Petitioner then appealed to the Eleventh Circuit Court of Appeals, which summarily affirmed. *Davila v. Delta Air Lines, Inc.*, 214 F.3d 1358 (11th Cir. 2000) (unpublished).

Following that ruling, Petitioner filed a charge of discrimination with the EEOC challenging the same May 1995 termination decision, but this time he alleged that Delta terminated him due to his alleged disability in violation of the ADA. The EEOC initially denied this charge as untimely, but it later issued Petitioner a right-to-sue letter, apparently without resolving the timeliness issue. Petitioner then filed the instant action, in which he attempts to relitigate his termination in the guise of a state-law breach of contract claim and a disability discrimination claim, despite being terminated due to the fact that Delta discovered he was not disabled but fraudulently claimed to be so.

Delta moved to dismiss Petitioner's Complaint, arguing that: (1) his claims were barred by *res judicata*, since the System Board already had ruled on the merits of his claim relating to his termination and since he previously had filed and lost an action on this same subject; (2) Petitioner's purported state-law breach of contract claim is preempted by the RLA; and (3) Petitioner's claims are barred by the relevant statutes of limitation. The District Court held that

Petitioner's claims were barred by *res judicata* and therefore dismissed his Complaint without addressing the preemption and statute of limitations issues.

Petitioner then appealed to the Eleventh Circuit Court of Appeals, which affirmed the dismissal on *res judicata* grounds. Specifically, the Court of Appeals rejected Petitioner's contention that *res judicata* did not bar his ADA claim because his first action was decided before he had obtained a right-to-sue letter from the EEOC. *Davila*, 326 F.3d at 1187. The Court also held that since Petitioner's first and second actions both were based on the same termination of employment, they related to the same transaction for *res judicata* purposes even though the claims he asserted in each action had different elements. *Id.* at 1188.

The Court of Appeals discussed Petitioner's third contention – that the decision in *Davila I* was not on the merits – at greater length. *Id.* at 1188-90. Ultimately, it concluded that, regardless of how the District Court couched its holding in *Davila I*, its decision to dismiss Petitioner's complaint was on the merits and not based on a lack of subject matter jurisdiction. That is so, said the Court of Appeals, because the *Davila I* court considered the merits of Petitioner's request for judicial review of the System Board award in his case and decided that none of the circumstances permitting the court to set aside an award under the RLA were present. *Id.* at 1189. The Court of Appeals held that the court in *Davila I* "did not base its dismissal on jurisdictional grounds," and that it thus "was a final judgment on the merits [that] is entitled to preclusive effect." *Id.* at 1190. It accordingly affirmed the dismissal of Petitioners' claims in this action on *res judicata* grounds.

## REASONS FOR DENYING THE PETITION

As a threshold matter, the Petition in this case may be untimely. Even if it is not, however, review is not warranted because the lower courts correctly determined that Petitioner's attempt to bring a second lawsuit relating to the termination of his employment with Delta is barred by *res judicata*. This is so even though Petitioner did not raise the same claims in both lawsuits and even though he did not have a right-to-sue letter from the EEOC when he filed *Davila I*. There is no circuit conflict to resolve, nor is there any other reason for this Court to grant the Petition in this matter.

### I. The Petition May Be Untimely.

Under Supreme Court Rule 13, a petition for writ of certiorari must be filed within 90 days of the entry of judgment from which review is sought. When a petition is filed, the Petitioner must promptly notify the opposing party. S. Ct. R. 12.3. Here, the Court of Appeals entered its judgment on April 3, 2003. Though this Court's docketing system indicates that the Petition in this matter was filed on July 2, 2003 (the 90th day), it was not docketed until September 11, 2003, and Delta did not receive it until early September.

It is unclear why there was a two-month delay between the filing of the Petition and Petitioner's service of it on Delta. However, to the extent this delay was caused by Petitioner's failure to comply with the rules of this Court, the Petition should be deemed to be untimely and denied on this basis alone.

## II. The Lower Courts Correctly Held That Petitioner's Claims Are Barred by *Res Judicata*.

It, of course, is a basic principle of law that "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were, or could have been raised in that action." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981); *see also Allen v. McCurry*, 449 U.S. 90, 94 (1980); *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948). The rationale of the doctrine of *res judicata* is that the "full and fair opportunity to litigate protects [a party's] adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153-54 (1979).

Petitioner chooses not to contest the principal aspect of the Court of Appeals' holding – that the judgment in *Davila I* was on the merits and not based on a lack of subject matter jurisdiction. Rather, he argues that: (1) the causes of action in this case and *Davila I* are not the same; and (2) his ADA claim should not be barred because he had not yet received a right-to-sue letter during the pendency of *Davila I*. Neither issue warrants this Court's review.

### A. *Davila I* and This Case Involve the Same Cause of Action.

The legal labels attached to the claims raised in a suit are not dispositive of whether it involves the same cause of action for *res judicata* purposes as a prior suit. Rather, "[a] cause of action does not consist of facts, but of the unlawful violation of a right which the facts show."

*Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 321 (1927) (barring second suit relating to same accident at issue in first suit even though different claims of negligence raised in second suit); *see also Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481 n.22 (1982) ("Res judicata has recently been taken to bar claims arising from the same transaction even if brought under different statutes.").

The Court of Appeals held that Petitioner's claim in this case "shares precisely the same transactional basis as the claim he advanced before the System Board, i.e., his termination. . . ." *Davila*, 326 F.3d at 1188. There can be no question that *Davila I* and this case arise out of the same nucleus of operative fact – Petitioner's May 1995 termination of employment by Delta. Thus, the Court of Appeals properly rejected Petitioner's argument that the legal labels he attaches to his claims are determinative of whether *res judicata* applies, and there is no need for this Court to review the issue.

### B. Petitioner's Failure to Obtain a Right-to-Sue Letter Before Filing *Davila I* Does Not Excuse Him From the Application of *Res Judicata*.

The law is uniform among the Courts of Appeals that Petitioner is not exempt from the rules of *res judicata* merely because he had not yet received a right-to-sue letter from the EEOC when he first filed a lawsuit. *See, e.g., Wilkes v. Wyo. Dep't of Employment Div. of Labor Standards*, 314 F.3d 501, 505-06 (10th Cir.), *cert. denied*, 72 U.S.L.W. 3007 (U.S. Oct. 6, 2003); *Havercombe v. Dep't of Educ. of Puerto Rico*, 250 F.3d 1, 4-8 (1st Cir. 2001); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 714-15 (9th Cir. 2001); *Jang v. United Techs. Corp.*, 206 F.3d 1147 (11th Cir. 2000); *Churchill*

*v. Star Enters.*, 183 F.3d 184, 193 (3d Cir. 1999); *Rivers v. Barberton Bd. of Educ.*, 143 F.3d 1029, 1032-33 (6th Cir. 1998); *Herrmann v. Cencom Cable Assocs., Inc.*, 999 F.2d 223, 225 (7th Cir. 1993); *Woods v. Dunlop Tire Corp.*, 972 F.2d 36, 39-41 (2d Cir. 1992).

This rule makes common sense, as it prevents a plaintiff from being able to split causes of action by bringing a suit alleging claims that do not require a right-to-sue letter, and then bringing another suit regardless of the success of the first action after receiving the letter. As noted in the cases cited above, plaintiffs in a situation like Petitioner's should either amend their Complaint once they do receive a right-to-sue letter or seek to stay their action until the letter is received. They may not, however, bring a second action relating to the same facts after receiving a right-to-sue letter. Likewise, Petitioner is not permitted to file another lawsuit relating to the same termination of employment that was at issue in both a System Board arbitration and a lawsuit challenging that arbitration award merely because he now has a right-to-sue letter. The Court of Appeals' application of well-settled federal law on this issue was proper.

Nor is there a circuit conflict on this issue. Petitioner points to no case in which a federal court has held that a plaintiff's failure to obtain a right-to-sue letter before judgment on the merits in one lawsuit permits the plaintiff to file a second lawsuit once the letter is received. All of the cases he cites merely apply settled *res judicata* or collateral estoppel principles. As noted above, the Courts of Appeal have uniformly rejected Petitioner's contention. Review by this Court thus is not warranted due to any alleged circuit conflict.

### C. Nor Can Petitioner Claim *Davila I* Was Not a Judgment on the Merits.

To the extent Petitioner does contest the Court of Appeals' holding that the District Court's decision in *Davila I* was not on the merits, this issue does not warrant review either. The System Board heard and determined the merits of Petitioner's claims relating to his termination. Petitioner may not relitigate those same claims in federal court following the System Board's award in Delta's favor. *See Andrews v. Louisville & N. R. Co.*, 406 U.S. 320, 325 (1972) (matters litigated before System Board cannot be relitigated in judicial proceeding).

Moreover, the Court of Appeals correctly held that the District Court in *Davila I* did not dismiss that action based on a lack of subject matter jurisdiction, but rather because Petitioner had not alleged facts that satisfied one of the narrow grounds for setting aside a System Board award under the RLA. District courts plainly have jurisdiction to determine whether a petition seeking to vacate a System Board award pursuant to the RLA meets the extremely narrow grounds for such action under 45 U.S.C. § 153(q); indeed, federal courts have exclusive jurisdiction to vacate RLA awards.[1] This is exactly what the District Court did in *Davila I*, holding that Petitioner's failure to allege any grounds to set aside the award under this statute doomed his petition.

The holding in *Davila I* was quintessentially a judgment on the merits of Petitioner's efforts to litigate his termination

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1. The three permissible grounds to vacate are failure of the System Board to comply with the RLA, failure to confine itself to the scope of its own jurisdiction, and fraud and corruption. *See* 45 U.S.C. § 153(q) (2000).

in the context of the RLA's legal landscape, foreclosing his efforts to relitigate the same issues in the guise of state-law breach of contract and ADA claims. This Court thus should decline review.[2]

### D. Review is Not Warranted for Policy Reasons Either.

The Courts of Appeals have uniformly adopted a sensible rule concerning whether an employment discrimination plaintiff may file suit bringing claims that do not require a right-to-sue letter and then file suit again asserting claims that do require such a letter. There thus is no need for this Court to intervene on this point, regardless of whether the issue is "important," as Petitioner argues.

Nor does this rule have a "debilitating" effect on employees, as Petitioner claims. The Courts of Appeals have enunciated reasonable procedures for employment discrimination plaintiffs who wish to file suit on other claims before receiving a right-to-sue letter to follow if they wish to preserve their right to assert claims for which such letters are required. Petitioner (who, incidentally, was represented by counsel in *Davila I*) simply did not follow those procedures. There accordingly is no basis for this Court's exercise of certiorari review in this matter.

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2. Nor did the District Court amend its ruling in *Davila I*, as Davila contends. Rather, as the Court of Appeals correctly held, that ruling was then, and is now, the dismissal of Petitioner's efforts to seek to vacate a System Board award under the RLA, a matter over which federal courts enjoy jurisdiction.

## CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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